IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8414 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement?-Yes. : YES

2. To be referred to the Reporter or not? :-No.

3. Whether Their Lordships wish to see the fair copy of the judgement?-No. : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No. : NO

5. Whether it is to be circulated to the Civil Judge?-No. :

ILABEN H DAVE

Versus

INSPECTOR GENERAL OF POLICE

Appearance:

MR MUKESH R SHAH for Petitioner

MR SP HASURKAR for Respondent No. 1

Mr.S.K. Patel, Assistant GOVERNMENT PLEADER, for Respondent No. 2

NOTICE SERVED for Respondent No. 3, 4, 5, 6, 7, 8

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 07/04/2000

ORAL JUDGEMENT

This petition is filed by the petitioner for an

appropriate writ, direction, or order, quashing and setting aside an order dated December 12, 1988 passed by the Inspector General of Police, respondent No.1 herein, giving promotion to respondents Nos. 3 to 8 to the post of Senior Clerk by superseding the claim of the petitioner and to grant all consequential benefits.

The case of the petitioner was that she was appointed as Junior Clerk on 12th of December, 1974 and since then, she was working as such. She had cleared Pre-Service Training Examination and her services were regularized from July 18, 1978. A seniority list was prepared on September 14, 1979 and the petitioner was shown at serial No.21. It was her case that promotion from the post of Junior Clerk was to the post of Senior Clerk and such promotion was to be given on the basis of seniority-cum-merit. It was asserted by her that a seniority list of Junior Clerks as on December 1, 1985 was prepared by the Department and her name appeared at serial No.234. Ordinarily, therefore, her case was required to be considered when her turn came for such consideration and she was to be promoted on the basis of seniority-cum-merit, but she was not promoted and the persons, who were at serial Nos. 235, 236, 241, 242, 245 and 249 (respondent Nos. 3 to 8), who were all junior to the petitioner, were promoted as Senior Clerks. She, therefore, approached this Court by filing the present petition.

She had also stated that for two years, i.e. for the period between 1982-'83, and 1983-'84, there were some adverse entries in her confidential record, but she was allowed to cross efficiency bar by an order dated March 23, 1984. In these circumstances, according to the petitioner, there was no earthly reason for not promoting her as Senior Clerk and the action of the authorities of superseding her and promoting juniors to the petitioner was illegal and contrary to law.

Rule was issued and today, the matter is called out for final hearing.

Mr.Shah, learned counsel for the petitioner, contended that the action of the respondent-authorities in not promoting the petitioner as Senior Clerk was illegal, contrary to law, arbitrary and unreasonable. He also submitted that there were adverse remarks in the service record of the petitioner for two years, but in 1984, she was allowed to cross efficiency bar and hence, the above adverse entries ought not to have been considered by the authorities and she ought to have been

promoted. He urged that the criterion for promotion from Junior Clerk to the post of Senior Clerk was seniority-cum-merit and on that basis, unless she was found `unfit', she ought to have been promoted. On all these grounds, the petition deserves to be allowed.

Though the petition was admitted on December 20, 1988 and an order was passed, by which the respondents were directed to file affidavit-in-reply latest by June 30, 1989 and though more than one decade has passed, no counter affidavit is filed. Mr.Patel, learned Assistant Government Pleader, however, drew my attention to the statutory rules framed under the Proviso to Article 309 of the Constitution and submitted that the assertion made by the petitioner that the promotion from the post of Junior Clerk to the post of Senior Clerk is to be made on the basis of "seniority-cum-merit" is not correct. Rule 2 of the Senior Clerk (in the Office of the Police Department) Recruitment Rules, 1990 provides that a promotion to the post of Senior Clerk Class III in the office of the Police Department shall be made of a person of "proved merit and efficiency" and according to the seniority of Junior Clerks. He, therefore, submitted that the test is not "seniority-cum-merit", but "proved merit and efficiency".

Mr.Shah, however, is right in contending that the Rules on which reliance is placed without filing affidavit by the other side would not apply to the case on hand, inasmuch as, the Rules were framed in 1990, whereas, in the instant case, we are concerned with promotion made in 1988. Obviously, therefore, the case will have to be decided on the basis of Rules / Administrative Instructions / Guidelines as applicable at the relevant time. It is not disputed and presumably cannot be disputed that respondents Nos. 3 to 8, who are made parties and who are served and yet who do not appear, were junior to the petitioner in the feeder cadre of Junior Clerk. The petitioner was at serial No.234 and respondents Nos. 3 to 8 were at serial No. 235 onwards. It is true that there were certain adverse entries in the confidential record of the petitioner for two years (1982-'83 and 1983-'84), but as her case was not at all considered, and juniors had been promoted, a limited direction can be issued to the respondent-authorities to consider the case of the petitioner on the basis of the Rules and Guidelines in force and take appropriate action in accordance with law. Since promotions were given in the year 1988 and more than 11 years have passed, the authorities are directed to undertake the said exercise as expeditiously as possible, preferably within three

months on the basis of the extant rules, guidelines, circulars, and policy and to pass an appropriate order. Such exercise will be undertaken within three months from the date of receipt of the writ. The petition is allowed to the above extent. In the facts, no order as to costs.

7th April, 2000 (C.K. Thakkar, J.)

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(apj)